IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 924 of 2003

For Approval and Signature:

THE HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT EDUCATION OFFICER - Petitioner(s)

Versus

SOLANKI ALPABEN KHODIDAS & 3 - Respondent(s)

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Appearance :

MR AD OZA, GOVERNMENT PLEADER for Petitioner No(s).: 1.
MR RR VAKIL for Respondent No(s).: 1.
MR NEERAJ J VASU for Respondent No(s).: 2.
NOTICE SERVED BY DS for Respondent No(s).: 3.

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CORAM :THE HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date : 22/06/2005

ORAL JUDGMENT

By filing this petition, the petitioner-District Education Officer has challenged the order passed in Application No.220/2000 by the Higher Secondary Schools

Services Tribunal, Ahmedabad.

The respondent No.1-Solanki Alpaben Khodidas moved an application before the tribunal challenging the order of the District Education Officer, not approving her appointment as Librarian in the respondent No.3-school with effect from 11-4-1994. The respondent-school had obtained no objection certificate from the DEO on 28-2-1994 to fill up the post of Librarian and in pursuance of the advertisement, the respondent No.1 applied for the said post and ultimately, the interview committee selected her. Thereafter, a proposal for approval of appointment of respondent No.1 was forwarded to DEO, which was not approved. Therefore, the respondent No.1 has approached the tribunal.

Inspite of the notice being issued by the tribunal nobody has contested the matter on behalf of the DEO office and ultimately, the tribunal has decided the matter ex-parte. The tribunal has recorded in its order that though various opportunities were given, no care was taken by DEO office to file appropriate reply. The tribunal ultimately allowed the application and it is observed that the applicant was selected by the Committee and there was no reason not to approve her appointment. Said order of the tribunal is under challenge in the present petition which is in the nature of Article 227 of the Constitution of India.

During the course of hearing, learned Government Pleader Mr.Oza vehemently submitted that unfortunately with a deliberate intention assistance was not given to the tribunal from DEO office, as the father of the respondent No.-1 was serving in the office of DEO since last more than 20 years and that is how the matter went ex-parte. Mr.Oza further submitted that the mother of the respondent No.1 (original applicant before the tribunal) is a trustee in the said institution in which the respondent No.1 was appointed and, therefore, even though the respondent No.1 was minor at the relevant time, appointment was given to her and said appointment on the face of it is void. It is also further submitted by Mr.Oza that because of the fact that trustee as well as the office of DEO were supporting the original applicant, appropriate facts were not placed before the tribunal. Mr.Oza further submitted that even otherwise the tribunal will have no jurisdiction to decide the aforesaid controversy, i.e., the question whether approval was rightly denied by the DEO or not.

Respondent No.3, Principal of school one Mr.Chandrakant C. Shah is present before this Court. He submitted that it is true that the mother of the original applicant before the tribunal is a trustee of the Jyoti Vidya Mandir Trust. He submitted that though in the trust register, her surname is mentioned as Purabia, in fact she is the mother of respondent No.1. He further submitted that the respondent No.1 had never remained physically present in the school yet salary is claimed by

her.

On the other hand, Mr.R.R.Vakil, learned advocate appearing for respondent No.1 has submitted that the tribunal was justified in passing the impugned order as even though ample opportunity was given, no reply was filed on behalf of the DEO office. He submitted that no doubt it is true that the original applicant was minor at the time of her appointment but there is nothing in the rules which suggests that a minor cannot be appointed as a librarian. He submitted that since no reply was filed before the tribunal, he is not in a position to state whether the mother of the original applicant is a trustee or whether the father of the applicant was serving in DEO office. He submitted that the tribunal has passed the order as per the available material on record and, therefore, this being a petition under Article 227 of the Constitution of India, this Court may not entertain this petition. He ultimately submitted that it is for this Court to consider whether in the interest of justice any opportunity is required to be given to the DEO to defend the matter before the tribunal by filing appropriate reply.

I have heard the learned counsels appearing for both the sides in detail. I have also considered the submission of the principal of Jyoti Vidyamandir, who is present before this Court. In my view, when it is not in dispute that the respondent was minor at the time of her

appointment and considering the submissions made before this Court, it would be just and proper to set aside the order of the tribunal for giving opportunity to the petitioner-DEO to file reply and to contest the matter on merits before the Tribunal.

At this stage, Mr.R.R.Vakil, learned advocate for respondent No.1 has requested that this Court may not observe anything on merits in this matter, when there is no material before this Court to come to the conclusion that the say of the DEO is correct.

In view of the request of the learned advocate for respondent No.1, I refrain myself from expressing any opinion on merits. Under the circumstances, order passed by the tribunal is set aside and the DEO is directed to file appropriate reply before the tribunal on or before 11th July, 2005. The tribunal shall thereafter take up the matter for hearing and dispose of the same as expeditiously as possible and preferably by 31st August, 2005.

Mr.Oza, learned Government Pleader has assured the Court that DEO will file appropriate reply with necessary material and DEO will not ask for any unnecessary adjournments and will cooperate for early hearing and disposal of the matter.

At this stage, respondent No.3 submitted that since he is not a party in the proceedings before the tribunal, he may be permitted to apply to be joined as party before the tribunal. If any such application is made, the same may be considered in accordance with law.

The tribunal, after considering the reply of DEO and after recording evidence, may pass appropriate order in accordance with law. It is clarified that the observations of this Court are tentative in nature and it will have no bearing at the time of deciding the matter before the tribunal and tribunal may decide the matter in accordance with law.

Accordingly, this petition is allowed and the impugned order of the tribunal is quashed and set aside. Rule is made absolute accordingly with no order as to costs. Writ to be sent to the Tribunal forthwith.

(P.B.MAJMUDAR, J.)

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